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March 27, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CS Docket No. 00-2

Dear Ms. Salas:

We herewith submit on behalf of the Association of Local Television Stations, Inc., four copies of our reply comments in the above-captioned proceeding. We have been advised by the Commission staff that the electronically filed version of these reply comments is unreadable. Therefore, we are complying with the staff's suggestion that we refile paper copies to assure that the Commission has readable copies available.

If the Commission has any questions about this matter, please, do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to be 'JP', with a long horizontal line extending to the right.

James J. Popham
Vice President, General Counsel

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**Before the
Federal Communications Commission
Washington, D.C.**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the matter of
Implementation of the Satellite Home Viewer
Improvement Act of 1999:

Application of Network Nonduplication,
Syndicated Exclusivity, and Sports Blackout
Rules to Satellite Retransmissions

CS Docket No. 00-2

**REPLY COMMENTS OF
THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.**

James J. Popham
Vice President, General Counsel
Association of Local Television Stations, Inc.
1320 19th. Street, N.W., Suite 300
Washington, D.C. 20036

February 28, 2000

Summary

ALTV has urged the Commission to apply the cable television network nonduplication, syndicated exclusivity, and sports blackout rules to satellite retransmission of nationally distributed superstations, noting that only the most minor adjustments were necessary to adapt the cable rules to satellite carriers. ALTV emphasized that this is exactly what Congress intended and what the statute required. Satellite interests – and EchoStar, in particular – invite the Commission to abandon and decimate the statute. EchoStar offers a litany of specious arguments designed to convince the Commission that Congress could not have meant what it said. Moreover, EchoStar essentially threatens to discontinue carriage of nationally distributed superstations if the Commission fails to relax the statutory requirements to its liking. All of this is premised on completely unproven allegations of real and formidable burdens which the rules would impose on their operations. EchoStar complains that it might have to have a database of subscribers, as if such a database was not essential to its billing and operations already. It ignores that both satellite carriers already provide program deletions pursuant to marketplace-negotiated, contractual agreements with other program suppliers. It provides no probative evidence of burden or unfeasibility – in marked contrast to the extensive evidence and analysis provided the Commission in 1988, when Congress directed the Commission to evaluate the feasibility of satellite syndex rules in a C-band environment. When all is said and done, EchoStar essentially offers nothing more than unsubstantiated claims laced with threats. Its paltry showing hardly deserves the Commission's attention.

ALTV also opposes creating loopholes via special exemptions and exceptions. No reason exists to invite relitigation of matters settled by Congress and the Commission in this proceeding.

Similarly, proposals which might discourage stations from exercising their rights under the rules, such as DirecTV's proposal that stations furnish electronic Zip Code files to satellite carriers, should be rejected.

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THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.**

The Association of Local Television Stations, Inc. ("ALTV"), hereby submits its reply comments in the above-captioned proceeding. In its comments, ALTV urged the Commission to apply the cable television network nonduplication, syndicated exclusivity, and sports blackout rules to satellite retransmission of nationally distributed superstations, noting that only the most minor adjustments were necessary to adapt the cable rules to satellite carriers.¹ ALTV emphasized that this is exactly what Congress intended and what the statute required.²

¹ Comments of the Association of Local Television stations, Inc., CS Docket No. 00-2 (filed February 7, 2000), *passim* [hereinafter cited as "ALTV Comments"].

² *Id.* at 2-7.

The two DBS operators responded differently. DirecTV offered proposals to adapt the cable television rules to satellite carriers.³ EchoStar, on the other hand, claimed that Congress really could not have meant what it said and threatened “the end of satellite retransmission of certain superstation signals,” based on unsubstantiated claims of “real and formidable burdens.”⁴ The following reply comments are directed in largest part at the latter’s comments.

I. ECHOSTAR VASTLY OVERSTATES THE SIGNIFICANCE OF TECHNICAL AND ECONOMIC CONSIDERATIONS IN THE COMMISSION’S DECISIONS REGARDING APPLICATION OF THE CABLE NETWORK NONDUPLICATION, SYNDICATED EXCLUSIVITY, AND SPORTS BLACKOUT RULES TO NATIONALLY DISTRIBUTED SUPERSTATIONS.

The statute tells the Commission to apply the cable network nonduplication, syndicated exclusivity, and sports blackout rules to satellite retransmission of the signals of nationally distributed superstations – period. This is the only proper interpretation of the statute.⁵ Nonetheless, EchoStar resists this interpretation by resorting to an array of consistently specious arguments. None has merit.

First, EchoStar wrongly suggests that if Congress had wanted “to automatically employ the cable rules in the satellite context, then Congress would have simply made these rules applicable to satellite carriers without need for a Commission rulemaking [*sic*].”⁶ Congress, of course, routinely adopts very specific statutory provisions, but delegates to the Commission the authority and obligation to adopt rules implementing the statutory provisions. The cable television must carry rules, the retransmission consent provision, and the satellite “carry one,

³ Comments of DirecTV, Inc., CS Docket No. 00-2 (filed February 7, 2000) [hereinafter cited as “DirecTV Comments”]. DirecTV carries only the signal of WGN; EchoStar carries the signals of all six nationally distributed superstations.

⁴ Comments of EchoStar Satellite Corporation, CS Docket No. 00-2 (filed February 7, 2000), at ii, 3 [hereinafter cited as “EchoStar Comments”].

⁵ ALTV Comments at 2-6.

⁶ EchoStar Comments at 5.

carry all” (*nee* ‘must carry’) rules are the obvious examples that come to mind. In each case, Congress enacted very specific requirements, but still directed the Commission to implement the statute via rules reflecting the statutory requirements.⁷ Congress took the same approach in Section 339(b)(1). It designated the substance of the rule to be adopted and left it to the Commission to handle a few practical details. Furthermore, Congress, indeed, made a “stark” distinction between the network nonduplication, syndicated exclusivity, and sports blackout rules applicable to superstation signals and the sports blackout rules applicable to network stations. With respect to the latter, but only the latter, the Commission was directed to consider technical and economic considerations in fashioning the rules implementing the statute.⁸ Finally, in citing the conference report for the proposition that “the practical differences between the two industries [cable and satellite] must be recognized and accounted for,” EchoStar tilts the mirror a bit too far.⁹ The statement serves only to acknowledge that Congress was guided by the principle, *inter alia*, that “the practical differences between the two industries must be recognized and accounted for.” Then, *having so recognized and accounted for those differences*, Congress went on to enact the provision *expressly, unconditionally, and unambiguously* directing the Commission to adopt rules applying the cable television network nonduplication, syndicated exclusivity, and sports blackout rules to satellite carrier retransmission of nationally distributed superstations, even identifying the rules by CFR title and section! Therefore, Congress’s decision to place the responsibility for implementing a very clearly defined statutory requirement hardly

⁷ See, e.g., *Report and Order*, MM Docket No. 92-259, 8 FCC Rcd 2965 (1993) [subsequent history omitted].

⁸ ALTV Comments at 2-3; DirecTV Comments at 3.

⁹ EchoStar Comments at 6, n.7, *citing Joint Explanatory Statement of the Committee of Conference on H.R. 1554*, 106th Cong., 145 Cong. Rec. H11792 (daily ed. November 9, 1999). H.R. 1554, of course, never left the clerk’s desk. Nonetheless, the same language appears in the

implies, as EchoStar contends, that the Commission is free to craft rules which vary in any substantive way from the requirement specified in the statute itself, *i.e.*, the cable television network nonduplication, syndicated exclusivity, and sports blackout rules.

Second, EchoStar attempts erroneously to parlay the small system exemption in the cable television rules to some unstated variety of similar exceptions to the satellite rules applicable to superstation retransmissions.¹⁰ Neither the actual “1000 subscriber” exemption nor the *rationale* (upon which EchoStar stakes its position) for that exemption (to accommodate small “mom and pop” cable systems, which could not afford the requisite switching equipment) has any place in the Commission’s deliberations in this proceeding. Small DBS company is an oxymoron. Both EchoStar and DirecTV provide nationwide service to millions of subscribers. Neither appears to have any difficulty purchasing expensive equipment. EchoStar, in fact, announced last week the construction of three new satellites, each presumably with a multi-hundred million-dollar price tag.¹¹ DirecTV also has announced similar satellite acquisitions.¹²

Third, EchoStar’s finding it “inconceivable” that Congress “would have deliberately instructed the Commission to promulgate a rule requiring deletion of *superstation* programming without regard to feasibility even as it fully acknowledged the possibility that the satellite carrier might not be capable of complying with a rule requiring deletion of network sports

section-by-section analysis of S. 1948 (which ultimately was enacted as part of an appropriations bill). *See* 145 Cong. Rec. S14708 (daily ed. November 19, 1999).

¹⁰ EchoStar Comments at 6.

¹¹ *See* “EchoStar Announces Construction Plans for Three New Satellites to Serve Dish Network’s Fast Growing Satellite Service,” attached hereto as exhibit A. EchoStar’s stock price soared at the news, raising its market capitalization to over \$25 billion. AOL Investment Snapshot – DISH (US) (February 28, 2000). EchoStar also today announced a two-for-one stock split. “EchoStar to Split Stock 2 for 1 After Ninefold Rise,” Bloomberg News (February 28, 2000).

¹² “DirecTV Orders First Spot Beam DBS Satellite,” *Communications Daily* (December 9, 1999) at 5-6.

programming” is in itself inconceivable.¹³ Nothing particularly “perplexing” occurred.¹⁴ No basis for “confusion” exists. The statutory language is clear and unambiguous. Consequently, no need to “clarify the confusion” exists.¹⁵ Therefore, that EchoStar may find Congress perplexing and confusing is irrelevant. Many people do.¹⁶ Congress spoke clearly and directly. It gave the Commission a mandate, and the Commission must carry out that mandate whether EchoStar understands it or likes or not.¹⁷

Fourth, having admitted that the statute and legislative history offer no basis for permitting the Commission to consider technical and economic feasibility in applying the cable television network nonduplication, syndicated exclusivity, and sports blackout rules to satellite

¹³ EchoStar Comments at 7.

¹⁴ EchoStar Comments at 7.

¹⁵ Any reference to the legislative history would be inappropriate in these circumstances. *Blum v. Stenson*, 465 U.S. 886, 896 (1984)(“[W]here resolution of a question of federal law turns on a statute and the intention of Congress, we look first to the statutory language and then to the legislative history if the statutory language is unclear.”); *Joy Technologies v. Secretary of Labor*, 99 F. 3d. 991, 995 (10 Cir. 1996)(“If a statute’s meaning is clear and unambiguous, the inquiry ends.”). In any event, the conference report is bereft of any language which in any way begins to suggest that the Commission has authority to rewrite the statute or treat one section as if it were modified like another section even though the modifying language was absent from the first section. Indeed, EchoStar itself admits that the conference report “does not help...” EchoStar Comments at 7.

¹⁶ One might *speculate* endlessly on why Congress did what it did. Perhaps, it remembered what EchoStar apparently has forgotten. The application of the cable television network nonduplication, syndicated exclusivity, and sports blackout rules to superstations was the less onerous alternative. Congress easily might have treated the superstations as the network stations they had become. Had it done so, their signals could have been provided only to unserved households *vis-à-vis* the UPN and WB networks. *Notice* at ¶8, n. 19. Perhaps, it simply considered the viability and vitality of free, over-the-air broadcast television a matter of greater concern than gate receipts at local sports events. Perhaps, it understood that the potential for impact on sports leagues was less significant in that network stations subject to the rule often cannot be retransmitted within the 35-mile zone of protection provided by the sports blackout rule. Network stations (except for the remaining superstations) may not be retransmitted to households in served areas. Regardless of what Congress had in mind, it expressed itself in clear, unambiguous language that the Commission has no authority to tamper with or temper.

retransmission of nationally distributed superstation signals, EchoStar then falls back to “the overall intent of the statute.”¹⁸ ALTV presumes that Congress was well aware of its overall intent when it enacted Section 339(b)(1)(A) and still considered it a necessary element of the statute. Notably, the rules contemplated by the statute, which apply the same rules applied to cable systems to satellite carriers, do “place satellite carriers on an equal footing with cable operators with respect to the availability of broadcast programming.”¹⁹ EchoStar must resort to a perverse logic in an attempt to refute that the rules would apply in nearly identical fashion to satellite carriers and cable systems alike.²⁰ The rules, says EchoStar, could “result in cessation of satellite transmissions” of superstations.²¹ Thus, cable would keep a leg up on the satellite carriers. In essence, EchoStar in warning the Commission that it will take its ball and go home if the Commission implements the statute in the manner intended by Congress. ALTV is prompted to ask EchoStar, therefore, “can it be in the interest of the consumer to deprive him or her from superstation programming offered by satellite?”²²

¹⁷ EchoStar seems most confused that Congress failed to comprehend or agree that what is good for EchoStar is good for the country. Even DirecTV, an indirect subsidiary of General Motors, did not go that far!

¹⁸ EchoStar Comments at 8.

¹⁹ EchoStar Comments at 8, *citing Notice* at ¶1.

²⁰ EchoStar Comments at 8.

²¹ EchoStar Comments at 8.

²² EchoStar Comments at 8. ALTV admits some perplexity of its own at EchoStar’s assertion that “superstation programming feeds...rank among the most popular staples of any MPVD offering.” In fact, only WGN would be considered among the more popular, widely distributed superstations on cable. Estimated non-DMA (non-local) cable households viewing each of the superstations, as reported in the *1999 Television Factbook* are as follows: WGN-34,416,350; WPIX-3,891,360; WSBK-2,155,250; KTLA-1,652,430; WWOR-1,263,800; and KWGN-386,790. Furthermore, programming on the superstations rarely, if ever, appears in the ranks of heavily watched cable programming.

Fifth, EchoStar relies far too heavily on the “Commission’s goal of facilitating competition in the multichannel video programming marketplace.”²³ Putting aside the fundamental legal principle that the Commission’s goals are trumped by specific statutory mandates, one might just as easily remind the Commission of its firm commitment to the concept of protecting local television stations’ exclusive program rights in the face of statutory (*nee* ’ compulsory) copyright licenses which deprive program copyright owners of the right (otherwise granted in the Copyright Act) to control distribution of their product. Thus, the Commission has stated:

When there is a diverse set of program sources and outlets, as there increasingly is in the current television marketplace, the net effect of allowing exclusive arrangements is to increase the kinds of competition and program diversity that can serve the interests of viewers. **For example, the emergence of Fox television as a programming service that can compete effectively with the 3 networks depends upon the expectation that cable operators will not destroy Fox affiliates’ programming exclusivity by carrying imported Fox programming distributed by a satellite carrier....** As long as there is reasonable competition among suppliers and distributors, exclusivity is a competitive tool that fosters the efficient channeling of programming to its most appropriate outlets, thereby maximizing the extent and diversity of programming available to viewers.²⁴

Thus, for example, the continuing emergence of the UPN and WB networks depends in considerable part on local affiliates’ ability to protect their exclusive network (and syndicated) program rights against importation of superstation signals which include UPN and WB programming. That Congress recognized the significance of exclusivity in program distribution resonates readily with the Commission’s perceptions on the matter.

In this regard, contrary to what appears to ALTV to be an outlandish assertion by EchoStar, local television stations have no other effective means by which to preserve their contractual exclusivity rights in a compulsory license regime. EchoStar claims that:

²³ EchoStar Comments at 8, *citing Notice* at ¶2.

²⁴ *Program Exclusivity in the Broadcast and Cable Industries*, 64 RR 2d at 1838-39, ¶64.

[B]roadcasters have an opportunity to protect their contract rights regardless of the SHVIA – in court through a breach of contract suit if they believe that a programmer has violated an exclusivity clause. While this part of the SHVIA was unquestionably intended to give *more* rights to the broadcasters, protection of their contractual rights exists regardless of the statute. The Commission should not lose sight of the objective of securing continued consumer access to superstation programming in the name of protecting rights that broadcasters have already.²⁵

Contrary to EchoStar's assertion, the statute – SHVIA – renders enforcement of local television stations' exclusive program rights impossible *vis-à-vis* satellite retransmissions of national distributed superstation signals *except by way of the exclusivity protection rules set forth in the statute!* Local television stations have no ability to enforce their existing contractual exclusivity rights in their local markets in the face of satellite retransmission of programming in their markets pursuant to a statutory copyright license that covers the retransmission. Broadcasters hardly got more rights. If anyone got *more* rights, it was the satellite carriers, which otherwise would have had to limit five of the six stations' signals to unserved households! However, to provide *some* protection to affiliates of the emerging UPN and WB networks (in lieu of the unserved household provision protecting affiliates of ABC, CBS, Fox, and NBC), Congress mandated imposition of the lesser network nonduplication and syndicated exclusivity rules on satellite carriers. Therefore, to suggest that a local television station might file a breach of contract suit against a program distributor who has no legal ability to prevent EchoStar from exhibiting its program in a local market in contravention of the local station's exclusivity rights or a superstation with no ability to deny retransmission consent to EchoStar is a flight of fancy.

²⁵ EchoStar Comments at 9, n.11.

II. ECHOSTAR'S NOT-SO-SUBTLE THREAT TO DISCONTINUE CARRIAGE OF SUPERSTATIONS RESTS ON AN UNPROVEN PREMISE OF "REAL AND FORMIDABLE BURDENS."

No sound basis exists for the Commission to succumb to such threats to cease superstation carriage premised on "real and formidable burdens."²⁶ When all is said and done, EchoStar has made no case that it faces any insurmountable or even excessively onerous burden in complying with the rules. First, the satellite carriers, including EchoStar routinely delete programming from program services when required by contracts negotiated in a marketplace unencumbered by a statutory copyright license.²⁷ Second, satellite carriers provide signals of distant and local television stations on a household-by-household basis. Although at present both local-into-local signals and distant network signals are provided via satellites with nationwide footprints, the satellite carriers are able to restrict access to those signals to the local market and unserved households eligible to receive the signals.²⁸ Third, EchoStar's direct competitor, DirecTV makes no such complaint or threat.

Fourth, EchoStar's allegation that "a satellite carrier would need to develop a huge database categorizing millions of subscribers on the basis of whether they live within the 35-mile zone (and also within narrower 10 mile zones) of each commercial broadcast station in the country" rings hollow.²⁹ EchoStar presumably already maintains a "huge database categorizing millions of subscribers" in various and numerous ways. Just to accomplish billing, EchoStar would need a database of subscribers which included their zip codes (for mailing and sorting)

²⁶ EchoStar Comments at 3.

²⁷ See, e.g., Comments of the National Football League, CS Docket No. 00-2 (filed February 7, 2000), at 8; Comments of the Office of the Commissioner of Baseball, CS Docket No. 00-2 (filed February 7, 2000), at 5; Comments of National Basketball Association, CS Docket No. 00-2 (filed February 7, 2000), at 6.

²⁸ Whether they actually do so in strict compliance with the law is, of course, another matter.

and the particular services to which they subscribe (*e.g.*, local-into-local service, network package, superstation package, pay-channels, pay-per-view usage, etc., etc., etc.). Furthermore, subscribers must be categorized by eligibility for local-into-local and network signals (*i.e.*, whether they were served or unserved *vis-à-vis* now seven broadcast networks.)³⁰ As noted previously, eligibility for network service often requires more exacting location data than zip codes.³¹

Fifth, the network nonduplication and syndicated exclusivity rules apply to no more than six -- and more likely five -- stations. Indeed, because the uplinked WGN signal available to cable systems already is largely, if not completely syndex and nondupe-proof, few, if any, deletions would be required from this most popular of superstation signals. Sixth, with respect to network nonduplication, program deletions from the signals will be uniform in all markets where a local affiliate of UPN or WB has asserted its rights under the rule. Seventh, with respect to syndicated programming, the superstations are large market stations, which typically acquire the most popular syndicated program material. This programming, because it ranks among the most popular, usually will have been sold in the vast majority of other markets, as well. Therefore, the circumstance apparently feared by EchoStar, crazy-quilt patterns of deletions, is highly unlikely to occur.³² Eighth, the Commission's findings with respect to feasibility in 1991 -- touted by EchoStar -- are irrelevant.³³ The Commission expressly acknowledged in 1991 that it had "no

²⁹ EchoStar Comments at 3. EchoStar's reference to "10-mile zones" is unexplained. The cable rules employ 35-mile and 55-mile zones.

³⁰ Although the superstation signals still may be provided to households served by UPN and WB, other WB and UPN affiliates remain subject to the unserved household proscription, as do PaxTV affiliates. *Notice* at ¶8.

³¹ ALTV Comments at 7-8.

³² EchoStar Comments at 9.

³³ EchoStar Comments at 3.

information in the record” concerning feasibility with respect to DBS.³⁴ Furthermore, even its conclusions concerning C-band were limited to the current environment (*i.e.*, “at this time”).³⁵ Ninth, EchoStar fails to present any probative evidence in support of its allegations of “impossible” burdens.³⁶ This utter evidentiary failure stands in marked contrast to the extensive evidence and analyses presented to the Commission in 1988.³⁷ Essentially, all EchoStar does is offer unsubstantiated claims laced with threats. Even if it were not legally irrelevant in the face of a clear, unambiguous statutory mandate, this paltry showing hardly begins to form the sort of record necessary even to attract the Commission’s attention.

III. NO BASIS EXISTS FOR CREATING LOOPHOLES VIA SPECIAL EXCEPTIONS AND EXEMPTIONS.

Having failed to convince Congress of the merits of its arguments and having offered the Commission no sound legal or evidentiary basis for overwriting the statute, EchoStar then seeks a special satellite-only exception and a procedure for case-by-case exemptions.³⁸ Neither deserves serious consideration. First, beyond the constraints of the statutory mandate and the lack of parallel provisions in the cable rules, the Commission has no business inviting any significant attenuation of the statute’s intended effect. Second, if the burdens on EchoStar are so great, why has it provided no probative or credible evidence now? Why does it need – or deserve – yet another chance to prove its allegations? Third, why burden the Commission with re-litigating on a case-by-case basis what Congress intended and what the Commission has just decided?

³⁴ *Report and Order*, Gen. Docket No. 89-89, 6 FCC Rcd 725 (1991) at ¶18.

³⁵ *Id.* at ¶¶21, 25.

³⁶ EchoStar Comments at 3.

³⁷ *See Report and Order*, Gen. Docket No. 89-89, *supra*, at ¶8.

³⁸ EchoStar Comments at 9.

Fourth, neither of its “customized” exceptions makes sense.³⁹ Limiting deletions to cases where it is “requested by qualified broadcast stations whose geographic zones (not counting overlaps) cover a substantial majority of the nation” could nullify the network nonduplication rule, while having no appreciable effect in the case of syndicated programming.⁴⁰ Neither UPN nor WB have the same ubiquitous nationwide affiliate bases as the larger, more established networks. Whether the specified zones of all their affiliates cover a substantial majority of the country geographically could be problematic. Thus, EchoStar’s exception could become a backdoor route to writing the statutory requirement out of existence. With respect to syndicated programming, as ALTV noted previously, the exception likely would have little, if any effect. Again, the highly popular syndicated programming broadcast by the superstations almost invariably will have been sold to local television stations in a large majority of other markets.⁴¹ Even so, if EchoStar can delete a program from a superstation signal in 156 of 210 markets, how much harder is it, if at all, to delete a program in 24 or 17 or 6 or three markets?

EchoStar’s “extraordinary hardship” exemption fares no better.⁴² In a universe of five or six superstations and two well-heeled DBS carriers, any such exemption would emasculate the rule. This contrasts mightily with the cable universe of thousands of systems in a variety of different circumstances, where exemptions in isolated circumstances would have no material impact on achievement of the rule’s objectives. Furthermore, the consumer demand for superstation signals derives not so much from their network or syndicated programming (which

³⁹ EchoStar Comments at 9.

⁴⁰ EchoStar Comments at 9.

⁴¹ *See infra* at 10.

⁴² EchoStar Comments at 9.

if deleted already would be available from a local station), but from their sports programming.⁴³ Finally, ALTV is puzzled by EchoStar's newfound concern about "the possible loss" of thousands of subscribers if a superstation signal were subject to deletion or even removed from its service?⁴⁴ EchoStar did not hesitate to remove nationally distributed superstation signals from its basic service and move them to a separate tier at an additional charge following the infamous CARP increase in copyright license fees.⁴⁵ Whereas this must have been irritating to subscribers who thought they would receive nationally distributed superstation signals as part of their basic service package, EchoStar's continuing growth pattern would suggest that the impact of this service reshuffling was nonexistent or at worst *de minimis* and readily and painlessly absorbed by EchoStar, if not its subscribers.⁴⁶ Therefore, the Commission ought resist EchoStar's plea for another bite at the apple.

IV. PROVISIONS WHICH WOULD DISCOURAGE LOCAL TELEVISION STATIONS FROM ASSERTING THEIR RIGHTS UNDER THE RULES SHOULD BE REJECTED.

The Commission should reject EchoStar's request that local television stations' exercise of their exclusivity rights be conditioned on their being non-discriminatory and exercised in a non-discriminatory fashion. First, nothing in the statute or cable rules suggests such a limitation on local television stations' rights. Second, EchoStar presents no evidence upon which the Commission might find or even predict harm to any valid interest. Third, enforcement of such a

⁴³ See, e.g., Comments of Tribune Broadcasting Company, CS Docket No. 00-2 (filed February 7, 2000) at 5 [hereinafter cited as "Tribune Comments"]. (*N.B.* The sports blackout rule will require deletions only in markets where a local team's home game is not televised locally by virtue of league rules. Rarely would this require deletion of a sports event broadcast on a superstation.).

⁴⁴ EchoStar Comments at 9.

⁴⁵ <http://www.dishnetwork.com/programming/local/super.htm>.

condition would involve the Commission in contract review and extensive fact-finding proceedings which risk exposure of proprietary information – a factor which a satellite carrier could exploit in seeking to evade its obligations under the rules.

ALTV also observes that EchoStar's request only lends support to ALTV's request that local stations be deemed exclusive right holders *vis-à-vis* satellite retransmissions if their contracts include the generic reference to the Commission's rules and the compulsory license.⁴⁷ ALTV's approach would assure some degree of non-discrimination inasmuch as both cable systems and satellite carriers would be affected identically by the provision under the exclusivity rules. Requiring specific references to satellite retransmission in contracts would facilitate the very same discriminatory language that EchoStar claims to abhor.

The Commission also ought reject DirecTV's request that local television stations be required to provide an electronic file consisting of the Zip codes wholly or partially encompassed in the station's specified zone of protection.⁴⁸ First, this would impose needlessly duplicative burdens on local television stations. Every station in a market would be forced to compile and submit to DirecTV identical information. Second, such information is readily available to the satellite carriers. Market zone and Zip Code information are published in various directories.⁴⁹ Third, once the information is compiled, changes will be few and far between; maintaining the

⁴⁶ EchoStar charged them an additional five dollars per month for nationally distributed superstation signals, but did add some additional superstations to the package. Subscribers to network service get a price break. <http://www.dishnetwork.com/programming/local/super.htm>

⁴⁷ ALTV Comments at 8.

⁴⁸ DirecTV Comments at 8-9.

⁴⁹ ALTV strongly supports the National Association of Broadcasters' proposals that satellite carriers be required to certify, under penalty of perjury, that they are unaware of any basis for believing that a subscriber has furnished a bogus address in order to evade the rules and that local television stations be required to provide notices only to the satellite carriers and not to their distributors. Comments of the National Association of Broadcasters, CS Docket No. 00-2 (filed February 7, 2000) at 4, 7.

currency of the data will impose no onerous burden. On the other hand, if individual stations were required to provide updated information, a satellite carrier would be forced to compare the changes for consistency and conduct its own review if discrepancies appeared.

DirecTV's proposal to create a new exception to the sports blackout rule when fewer than five per cent of the television households in a market (DMA) would be subject to the blackout also should be rejected by the Commission.⁵⁰ DirecTV would apply the blackout on a provider-by-provider basis.⁵¹ Thus, nearly 10 per cent of the television households in a market could be subject to the exception if applied just to the two DBS providers. Furthermore, no parallel provision exists in the cable rules. However, the *precedent* for cable, as well as for the other exclusivity rules would be worrisome, even dangerous. More to the point, DirecTV provides no substantial evidence to support a finding of true unfeasibility. Even in the case of application of the rule to network stations, the threshold for relief is high.⁵² Therefore, the Commission lacks a rationale or a record to support such an exemption.

Lastly, the Commission should defer consideration of changes in the network nonduplication rule to take into account various patterns of sports telecasts, such as the NFL's.⁵³ The implications of any such changes demand scrutiny undistracted by the more seminal issues placed on the Commission's agenda by the statute.⁵⁴

V. CONCLUSION

ALTV urges the Commission to remain steadfastly faithful to the statute. Those parties that implore the Commission to give them what Congress has denied them should in turn be

⁵⁰ DirecTV Comments at 17-18.

⁵¹ *Id.*

⁵² See §339(b)(1)(B).

⁵³ NFL Comments at 13.

⁵⁴ Tribune Comments at 4-5.

denied by the Commission. Therefore, ALTV reiterates that the Commission ought apply the cable television network nonduplication, syndicated exclusivity, and sports blackout rules to satellite retransmission of nationally distributed superstation signals in the direct, straightforward manner ordained by Congress in Section 339(b)(1)(A).

Respectfully submitted,

James J. Popham
Vice President, General Counsel
Association of Local Television Stations, Inc.
1320 19th. Street, N.W., Suite 300
Washington, D.C. 20036
(202) 887-1970

February 28, 2000